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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 18

Application Number: 09/032083

Filing Date: 02/27/1998

Appellant(s): Bell et al.

Kurt M. Pankartz
For Appellant

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed November 13, 2001.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

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The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-12, 14-32 and 34-105 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

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(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

6,201,804	Kikinis	03-2001
5,726,984	Kubler	03-1998
3 5,604,707	Iwami	02-1997
5,732,078	Arango	03-1998
5,724,355	Bruno	03-1998

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 U.S.C. § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-12, 14-32, 34-90 and 94-95 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had

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possession of the claimed invention. The original specification fails to provide support for the limitation "the media stream communication session is comprised of packets exchanged between the stateless client and said state-based client" which is now being recited in the claims 1-12, 14-32, 34-80. The original specification also fails to provide support for the limitation "receiving from the stateless client a first packet comprising a stateless signaling message; translating the first packet into a second packet comprising state-based signaling message" which is now being recited in the claims 81-90. The original specification also fails to provide support for the limitation of call initiation signaling message comprising a packet-based telephony message.

Claim Rejections - 35 U.S.C. § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

4. Claims 91, 93, 98-99, 101-102 and 104-105 are rejected under 35 U.S.C. 102(e) as being anticipated by Kikinis (USP 6,201,804).

Regarding claims 91, 93, 98-99, 101-102 and 104-105, Kikinis teaches bridge 87 for receiving a call initiation signaling message from the remote state-based terminals (39, 41, 54, 45) via the Internet 15 and server 29. Bridge 87 also processes the call initiation signaling message to determine

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that the stateless client (in PSTN 13) is able to conduct the session initiated at the remote state-based terminal, communicates and exchanges packets with the remote state-based terminals (39, 41, 54, 45) via the Internet 15 and server 29. When a caller in Internet 15 makes an Internet call to a destination in call center 89, server 29 would then perform the tasks of receiving a call initiation signaling message, communicating and exchanging packets with the remote state-based terminals in the Internet 15 as described above.

Claim Rejections - 35 U.S.C. § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(a) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

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7. Claims 1-6, 9,11-12,14-26, 29, 31-32, 34-47, 50-62, 65-73, 75-78 and 80-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kubler et al (USP 5,726,984) in view of Kikinis (USP 6,201,804).

Regarding claims 1-6, 9, 11-12, 14-26, 29, 31-32, 34-47, 50-62, 65-73, 75-78 and 80-90, Kubler teaches a system capable of performing state-based signaling on behalf of a stateless-client (telephone 6331; figure 63) comprising a controller (Internet provider 6333; figure 63), coupled to a state-based terminal (computer 6301 or 6303; figure 63), that translates at least one stateless signaling message (telephony dialing signal) received from the stateless client (telephone 6331) to at least one state-based signaling message for presentation to said state-based terminal (computer 6301 or 6303) thereby facilitating a media stream communications session between said stateless client (telephone 6331) and said state-based terminal (computer 6301 or 6303) over an IP-based network (Internet 6315). Since the Internet uses packets for its communication, the communications portion between the service provider 6333 and Internet routing 6307 via Internet 6315 has to use packets. In other words, the communications stream between provider 6335 and 6305 (or 6307) has to comprise packets. Kubler differs from the claims in that Kubler does not teach that the media stream communications between the stateless client (telephone 6331) and the service provider 6335 comprises packets. However, such use is well known in the art as evidenced by Kikinis. Specifically, Kikinis teaches that the communication portion between the telephone (stateless client) (77, 79, 81 and 83) and the service provider (61 in figure 3 or 29 in figure 4) can also use packets. Kikinis shows that the communications between the telephone (77, 79, 81 or 83) and the service provider (router

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61 in figure 3 or router 29 in figure 4) takes place over packet-based network 77. In other words, the communication portion between the telephone (stateless client) (77, 79, 81 and 83) and the service provider (28, 29, 63 & 61) also uses packets. Since network 77 carries both regular calls (from PSTN 13) and Internet calls (from Internet 15), the agent (who communicates over network 77 using telephone 77 and computer 39) can handle both regular calls (from PSTN 13) and Internet calls (from Internet 15). Thus, the agent's time is better utilized (col. 8, lines 21-25). See figure 4 wherein telephones 77, 79, 83 and 83 communicate with the Internet caller via server 29 and with the regular telephone caller via bridge 87 using packets transmitted on network 77. Since both the regular telephone calls and Internet calls use the same network, this structure reduces cost by eliminating the need for an expensive COST telephony switching apparatus (col. 9, lines 16-18) which is normally required for regular telephone calls. Thus, it would have been obvious to one skilled in the art at the time the invention was made to apply Kikinis' teaching of using packets for communications between the telephone (stateless client) and the service provider in Kubler's system with the motivation being to enable the user to handle both regular telephone calls and Internet calls using the same packet network while reducing cost by eliminating the need for expensive COST telephony switching apparatus.

8. Claims 41-46, 50-54, 56-61, 65-69, 71-73, 75-78 and 80-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwami et al (USP 5,605,737) in view of Kikinis (USP 6,201,804).

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Regarding claims 41-47, 50-62, 65-73, 75-78 and 80-90, Iwami teaches a system capable of performing state-based signaling on behalf of a stateless-client (2) comprising a controller (20) coupled to a state-based terminal (10-1, 10-2), that translates at least one stateless signaling message (telephony dialing) received from the stateless client (2) to at least one state-based signaling message for presentation to said state-based terminal (10-1, 10-2) thereby facilitating a media stream communications session between said stateless client (2) and said state-based terminal (6301, 6303) over an packet-based network (1). Iwami differs from the claims in that Iwami does not teach that the stateless client (6331) communicates with the state-based client (6301, 6303) using packets. However, Kikinis teaches that the telephone (state-less client) can communicate with a computer (state-based client) using packets. In figure 3, telephones 77, 79, 81 and 83 communicate with an Internet caller using packets transmitted on network 77 via server 29. This structure has the advantage that the agent can handle both regular calls and Internet calls. Thus, agent's is better utilized (col. 8, lines 21-25). See figure 4 wherein telephones 77, 79, 83 and 83 communicates with Internet caller via server 29 and with regular telephone caller via bridge 87 using packets transmitted on network 77. This structure reduces cost by eliminating the need for expensive COST telephony switching apparatus (col. 9, lines 16-18). Thus, it would have been obvious to one skilled in the art at the time the invention was made to apply Kikinis' teaching of the telephone (state-less client) communicating with a computer (state-based client) using packets in Iwami's telephone system with the motivation being to enable the user of the telephone to handle both regular telephone call as well

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as Internet call and/or to reduce cost by eliminating the need an expensive COST telephony switching apparatus.

9. Claims 10 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kubler et al (USP 5,726,984) in view of Kikinis (USP 6,201,804), as applied to claim 1 above, and further in view of Bruno et al (USP 5,724,355).

Kubler differs from claims 10 and 30 in that Kubler does not explicitly teach that H.323 protocol can be a protocol for a state-based signaling system. However, H.323 is well standardized and its use for state-based signaling is well known in the art as evidenced by Bruno et al. Specifically, Bruno teaches the use of H.323 protocol to establish a multimedia connection from a state-based terminal to the Internet. Thus, it would have been obvious to one skilled in the art at the time the invention was made to apply Bruno's teaching of using H.323 protocol to establish a multimedia connection from a state-based terminal to the Internet in Kubler's system with the motivation being to facilitate the connection between a regular telephone user with a state-based terminal having ISDN connection to the Internet.

10. Claims 74 and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kubler et al (USP 5,726,984) in view of Kikinis (USP 6,201,804).

Kubler in view of Kikinis differs from the claim in that Kubler in view of Kikinis does not explicitly teach the use of a gateway at the ISP to connect the Intranet and the Internet. However,

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such use of Intranet and a gateway to connect the Intranet and the Internet is old and well known in the art of gateway. Thus, it would have been obvious to one skilled in the art at the time the invention was made to use a gateway to connect the Intranet and the Internet in Kubler in view of Kikinis's system with the motivation being to provide a controllable connection between the Intranet and the Internet.

11. Claims 7-8, 27-28, 48-49 and 63-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kubler et al (USP 5,726,984) in view of Kikinis, as applied to claim 1 above, and further in view of Arango (USP, 5,732,078).

Regarding claims 7-8, 27-28, 48-49 and 63-64, Kubler in view of Kikinis differs from the claim in that Kubler in view of Kikinis does not teach that a portion of the media stream traverse a path without the server. However, Arango teaches a system wherein a portion of the media stream traverse a path without the original server. For example, a portion of a media stream from originator 210 may reach destination 250 without going through server 224 (going through router 226 and network 260 instead of router 224 and WAN 230) while other portions of the media stream from originator 210 goes through server 224 to reach destination 250. Such mechanism enables the system to provide a guaranteed bandwidth service for certain traffic. Thus, it would have been obvious to one skilled in the art at the time the invention was made to use Arango's teaching of enabling a portion of the media stream traverse a path without the server in Kubler's system with the motivation being to provide a guaranteed bandwidth service for certain traffics.

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12. Claims 1-6, 9, 11-12, 14-26, 29, 31-32, 34-40, 47, 55, 62, 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwami et al (USP 5,605,737) in view of Kikinis.

Regarding claims 1-6, 9, 11-12, 14-26, 29, 31-32, 34-40, 47, 55, 62, 70, Iwami teaches a system capable of performing state-based signaling on behalf of a stateless-client (2) comprising a controller (20) coupled to a state-based terminal (10-1, 10-2), that translates at least one stateless signaling message (telephony dialing) received from the stateless client (2) to at least one state-based signaling message for presentation to said state-based terminal (10-1, 10-2) thereby facilitating a media stream communications session between said stateless client (2) and said state-based terminal (6301, 6303) over an packet-based network (1). Iwami differs from the claim in that Iwami does not teach the use of IP protocol for the packet network. However, Kikinis teaches the use of the Internet to route telephone call. The Internet uses the IP (Internet Protocol) protocol. Such use of IP protocol for the packet network is old and well known in the art for its advantage such as enhancing the connectability and compatibility of the packet network since IP is widely used in the globally-connected Internet. Thus, it would have been obvious to one skilled in the art at the time the invention was made to apply Kikinis' teaching of using the Internet to route telephone calls in Iwami's packet network with the motivation being to enhance the connectability and compatibility of the packet network.

13. Claims 92, 94-97, 100 and 103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kikinis (USP 6,201,804).

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Regarding claims 92 and 100, Kikinis fails to teach IPX/SPX and SNA as transport protocols. However, IPX/SPX and SNA protocols are well known in the art for transporting packets in LAN and IBM network respectively. Thus, it would have been obvious to one skilled in the art at the time the invention was made to include IPX/SPX and SNA protocols in Kikinis' transport protocols with the motivation being to be compatible with enable local area networking and networking with IBM-based network.

Regarding claims 94-95, Kikinis fails to teach "set ringer on" message and "station off hook" messages are well known in the art of telephony for setting up telephone calls. Thus, it would have been obvious to one skilled in the art at the time the invention was made to use "set ringer on" message and "station off hook" messages in Kikinis' telephone setup protocol with the motivation being to be compatible with enable proper telephone connection establishment.

14. Claims 96-97 and 103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kikinis (USP 6,201,804), as applied to claim 91 above, and further in view of Bruno et al (USP 5,724,355).

Regarding claims 96-97 and 103, Kikinis differs from the claims in that Kikinis does not teach H.323 as a protocol for use in the state-based signaling system. However, H.323 is well standardized and its use for state-based signaling is well known in the art as evidenced by Bruno et al. Specifically, Bruno teaches the use of H.323 protocol to establish a multimedia connection from a state-based terminal to the Internet. Thus, it would have been obvious to one skilled in the art at the time the invention was made to apply Bruno's teaching of using H.323 protocol to establish a multimedia

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connection from a state-based terminal to the Internet in Kikinis' system with the motivation being to facilitate the connection between a regular telephone user with a state-based terminal having ISDN connection to the Internet.

(11) Response to Argument

(I) With respect to Appellant's argument that the limitations of "the media stream communication session is comprised of packets exchanged between the stateless client and said state-based client", and "receiving from the stateless client a first packet comprising a stateless signaling message; translating the first packet into a second packet comprising state-based signaling message" are supported by the specification at page 5, lines 9-11, 16-19, page 6, lines 14-20, page 13, lines 4-6, 8-13, page 16, lines 17-21, Fig 2, original claim 1 and original claim 41 of the application, Examiner notes that a careful reading of the aforementioned places (i.e., page 5, lines 9-11, 16-19, page 6, lines 14-20, page 13, lines 4-6, 8-13, page 16, lines 17-21, Fig 2, original claim 1 and original claim 41 of the application) reveals no such supports for the claimed limitation. For example, page 5, lines 9-11 and 16-19 of the specification states "in one embodiment, the system includes a controller, couples to a state-based terminal, that translates at least one stateless signaling message received from the stateless client to at least one state-based signaling message for presentation to the state-based terminal thereby facilitating a media stream communications session between the stateless client and the state-based terminal over an Internet protocol (IP)-based network. In a related, but alternative

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embodiment of the present invention, the controller translates at least one state-based signaling message received from the state-based terminal to at least one stateless signaling message for presentation to the stateless client. The present invention introduces the broad concept of a controller that performs state-based signaling on behalf of a stateless client device to facilitate a communications session therewith.” This passage does not have support for the claimed limitation of “the media stream communications session between the stateless client and the state-based client comprises packets.”

Similarly, page 6, lines 14-20 of the specification states “For the purposes of the present invention, the IP-based network shall include presently available, and present and future related networks that are derived in whole or in part from the Internet protocol. While the present invention is particularly advantageous when applied to an IP based network, the principles of the present invention are equally applicable to any non-circuit switched-mode networks, especially packet-based networks.” Again, support for the claimed limitation of “the media stream communications session between the stateless client and the state-based client comprises packets” can not be found.

Similarly, page 13, lines 4-13 of the specification recites “Turning now to FIGURE 2, illustrated is a schematic diagram of an embodiment of a communications network 200 constructed according to the principles of the present invention. In the present embodiment, voice, video and data may be accommodated by a single network. The network 200 includes external first and second state-based terminals 205,206, an external packet switched data network [e.g., Internet Protocol (IP)] 210, an IP gateway 215, a local network (e.g., IP Intranet) 220, a state-based terminal 225, a server 230

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and first, second and third stateless clients 235, 236, 237, respectively.” Again, support for the claimed limitation of “the media stream communications session between the stateless client and the state-based client comprises packets” can not be found.

Page 16, lines 17-21 of the specification which recites “The network 200 network may employ a transport protocol selected from the group consisting of an Internet Protocol (IP), an Internetwork packet exchange/sequence packet exchange (IPX/SPX) and a systems network architecture (SNA) or any other transport protocol that is applicable to any non-circuit switched-mode network” does not provide support for the claimed limitation of “the media stream communications session between the stateless client and the state-based client comprises packets” either.

Fig 2, original claim 1 and claim 41 also do not provide support for the claimed limitation of “the media stream communications session between the stateless client and the state-based client comprises packets”.

Thus, it is clear that the specification does not provide support for the limitation “the media stream communication session is comprised of packets exchanged between said stateless client and said state-based client” as claimed.

(ii) With respect to Appellant’s argument that Kikinis Patent is not a proper prior art under 102(e) or 103(a) rejection because the appellant filed a declaration under 37 C.F.R 1.131, Examiner notes that the declaration filed on 8/22/2001 under 37 CFR 1.131 has been considered but is deemed insufficient and ineffective to overcome the Kikinis (USP 6,201,804 B1) reference.

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MPEP, section 715.07 clearly states that a general allegation that the invention was completed prior to the date of the reference is not sufficient. *Ex parte Saunders*, 1883 C.D. 23, 23 O.G. 1224 (Comm's Pat. 1883). MPEP, section 715.07 clearly guides that the affidavit or declaration must state FACTS and produce such documentary evidence and exhibit in support thereof as are available to show conception and completion of invention in this country or in NAFTA or WTO member country, at least the conception being at a date prior to the effective date of the reference.

The submitted evidence fails to show (A) reduction to practice of the invention prior to the effective date of the Kikinis (USP 6,201,804 B1) reference; or (B) a conception of the invention prior to the effective date of the Kikinis reference coupled with due diligence from prior to the reference date to a subsequent reduction to practice; or (C) conception of the invention prior to the effective date of the Kikinis reference coupled with due diligence from prior to the reference date to the filing date of the application.

While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

The only evidence that the appellant has submitted is the "assignment" which was executed on Feb 25 1998. This date is AFTER the filing date of the Kikinis Patent (Feb 17, 1998). Therefore, the declaration is considered ineffective.

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(iii) With respect to Appellant's argument that Kikinis Patent is not a proper prior art under 102(e) rejection of the claims 91, 93, 98-99, 101-102 and 104-105 because the appellant filed a declaration under 37 C.F.R 1.131, Examiner notes that as discussed above since the submitted evidence is insufficient and ineffective, declaration under 37 C.F.R 1.131 is considered to be ineffective. Thus, the Kikinis Patent (USP 6,201,804) is still a proper prior art.

(iv) With respect to Appellant's argument that Kubler Patent alone fails to disclose the claims 1-6, 9, 11-12, 14-26, 29, 31-32, 34-47, 50-62, 65-73, 75-78 and 80-90 because Kikinis Patent is not a proper prior art under 103(a) rejection when the appellant filed a declaration under 37 C.F.R 1.131, Examiner notes that as discussed above since the submitted evidence is insufficient and ineffective, declaration under 37 C.F.R 1.131 is considered to be ineffective. Thus, the Kikinis Patent (USP 6,201,804) is still a proper prior art.

(v) In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention

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was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(vi) In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this particular case, the motivation to combine Kubler and Kikinis is to enable the user to handle both regular telephone calls and Internet calls using the same packet network while reducing cost by eliminating the need for expensive COST telephony switching apparatus.

(vii) With respect to Appellant's argument that Iwami Patent alone fails to disclose the claims 41-46, 50-54, 56-61, 65-69, 71-73, 75-78 and 89-90 because Kikinis Patent is not proper prior art under 103(a) rejection when the appellant filed a declaration under 37 C.F.R 1.13, Examiner notes that as discussed above since the submitted evidence is insufficient and ineffective, declaration under 37 C.F.R 1.131 is considered to be ineffective. Thus, the Kikinis Patent (USP 6,201,804) is still a proper prior art and the rejection under 35 U.S.C. 103(a) is still proper.

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(viii) With respect to Appellant's argument that Kubler or Bruno Patents alone or in combination fail to disclose the claims 10 and 30 because Kikinis Patent is not proper prior art under 103(a) rejection when the appellant filed a declaration under 37 C.F.R 1.131, Examiner notes that as discussed above since the submitted evidence is insufficient and ineffective, declaration under 37 C.F.R 1.131 is considered to be ineffective. Thus, the Kikinis Patent (USP 6,201,804) is still a proper prior art and the rejection under 35 U.S.C. 103(a) is still proper.

(ix) With respect to Appellant's argument that Kubler Patent alone to disclose the claims 74 and 79 because Kikinis Patent is not proper prior art under 103(a) rejection when the appellant filed a declaration under 37 C.F.R 1.131, Examiner notes that as discussed above since the submitted evidence is insufficient and ineffective, declaration under 37 C.F.R 1.131 is considered to be ineffective. Thus, the Kikinis Patent (USP 6,201,804) is still a proper prior art and the rejection under 35 U.S.C. 103(a) is still proper.

(x) With respect to Appellant's argument that Kubler or Arango Patents alone or in combination fail to disclose the claims 7-8, 27-28, 48-49 and 63-64 because Kikinis Patent is not proper prior art under 103(a) rejection when the appellant filed a declaration under 37 C.F.R 1.131, Examiner notes that as discussed above since the submitted evidence is insufficient and ineffective, declaration under 37 C.F.R 1.131 is considered to be ineffective. Thus, the Kikinis Patent (USP 6,201,804) is still a proper prior art and the rejection under 35 U.S.C. 103(a) is still proper.

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(xi) With respect to Appellant's argument that Iwami Patent alone fails to disclose the claims 1-6, 9, 11-12, 14-26, 29, 31-32, 34-40, 47, 55, 62 and 70 because Kikinis Patent is not proper prior art under 103(a) rejection when the appellant filed a declaration under 37 C.F.R 1.131, Examiner notes that as discussed above since the submitted evidence is insufficient and ineffective, declaration under 37 C.F.R 1.131 is considered to be ineffective. Thus, the Kikinis Patent (USP 6,201,804) is still a proper prior art and the rejection under 35 U.S.C. 103(a) is still proper.

(xii) With respect to Appellant's argument that Kikinis Patent alone or in combination fail to disclose the claims 92, 94-97, 100 and 103 because Kikinis Patent is not proper prior art under 103(a) rejection when the appellant filed a declaration under 37 C.F.R 1.131, Examiner notes that as discussed above since the submitted evidence is insufficient and ineffective, declaration under 37 C.F.R 1.131 is considered to be ineffective. Thus, the Kikinis Patent (USP 6,201,804) is still a proper prior art and the rejection under 35 U.S.C. 103(a) is still proper.

(xiii) With respect to Appellant's argument that Bruno Patent alone or in combination fails to disclose the claims 96-97 because Kikinis Patent is not proper prior art under 103(a) rejection when the appellant filed a declaration under 37 C.F.R 1.131, Examiner notes that as discussed above since the submitted evidence is insufficient and ineffective, declaration under 37 C.F.R 1.131 is considered

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to be ineffective. Thus, the Kikinis Patent (USP 6,201,804) is still a proper prior art and the rejection under 35 U.S.C. 103(a) is still proper.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Steven Nguyen
February 10, 2002



ALPUS H. HSU
PRIMARY EXAMINER



HUY D. VU
PRIMARY EXAMINER